

ORDINANCE NO. 16- 01

**AN ORDINANCE TO AMEND APPENDIX A- FRANCHISES, ARTICLE III-REFUSE
COLLECTION- INLAND SERVICES CORPORATION, CONCERNING THE
EXCLUSIVE RESIDENTIAL WASTE DISPOSAL FRANCHISE AGREEMENT WITH
INLAND SERVICES CORP., L.L.C., PROVIDING FOR THE EMERGENCY CLAUSE
AND FOR OTHER PURPOSES.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROGERS,
ARKANSAS:

Section 1: That Appendix A- Franchises, Article III- Refuse Collection- Inland Services Corporation, of the Code of Ordinances, City of Rogers, Arkansas, is hereby amended and shall read as shown in Exhibit "A", attached hereto and incorporated by reference as if set out word for word herein.

Section 2: That the need to amend said code is immediate in order to protect the public peace, health, safety and welfare, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from the date of its passage and approval.

Section 3: Severability Provision. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 4: Repeal of Conflicting Ordinances and Resolutions. All ordinances, resolutions or orders of the City Council, or parts of ordinances, resolutions or orders of the City Council in conflict herewith are hereby repealed to the extent of such conflict.

PASSED this 12th day of January, 2016.

APPROVED:


C. GREG HINES,
Mayor

Attest:


PEGGY DAVID, City Clerk

Prepared by: Chris Griffin, City Staff Attorney

EXHIBIT "A"**Agreement for the Collection and Transfer of Residential Solid Waste and Recyclable Materials**

This Agreement, made and entered into this 31ST day of December, 2015, by and between the City of Rogers, Arkansas ("the city") and Inland Waste Solutions, LLC ("the contractor");

Witnesseth, that the city and the contractor, for the consideration and on the terms stated herein, do agree that the contractor is granted the sole and exclusive right to collect, and to transfer for processing or disposal, all residential recyclable material and residential solid waste within the geographic area described in this agreement, and shall furnish all personnel, labor, equipment, trucks, and other items necessary, to provide such collection and transfer services as specified and to perform all work called for and described in this agreement. All residential customers of the City of Rogers are prohibited from contracting or hiring any other individual or firm for the collection and disposal of residential solid waste.

Section I. - Definitions.

The following definitions are applicable to this agreement:

Container bin: A wheeled plastic cart with integral lid which is specifically designed to work with contractor's collection trucks and which is provided to customers by the contractor for the purpose of containing solid waste for automated pickup.

City: The municipal corporation, the City of Rogers, Arkansas and the geographic area within the City of Rogers corporate limits.

Contractor: A solid waste collection company whose services are provided through this legally binding agreement with the City of Rogers for the purpose of collecting and transferring residential solid wastes and recyclable materials.

Hazardous wastes: Wastes, in any amount, which are defined, characterized, or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or wastes, in any amount, which are regulated under federal or state law. For purposes of this ordinance, the term hazardous wastes shall also include motor oil, combustible fluids and materials, liquid paint, automotive batteries, and waste tires.

Recycling bin: A container of at least 18-gallon capacity in which residents place recyclable materials, as defined in this Agreement, at curbside for collection.

Residential unit: A dwelling within the corporate limits of the City of Rogers occupied by a person or a group of persons comprising not more than one family.

Rogers Water Utilities (RWU): The publicly owned waste and sewer department in the City of Rogers, Arkansas charged with billing and collection of the solid waste collection and disposal fees charged to residents under this agreement.

Solid waste: Any trash, food, refuse, container, or other rubbish produced by a residential or nonresidential establishment that can be collected and transported by a contractor and accepted by a landfill that is duly licensed and approved and that meets all applicable local, state, and federal laws.

Green bags: Special bags made available to residential customers by the contractor at an extra charge for use by the customers to assure collection of yard waste.

White goods and bulky waste: Includes common household appliances, furniture, mattresses, tools, large toys or parts thereof, Christmas trees, and all items that are too large to be placed in a container bin. Specifically excluded are items containing hazardous materials (i.e., refrigerators, batteries, etc.) and construction and demolition waste.

Yard wastes: Includes normal organic yard and garden refuse such as tree, shrub, and brush trimmings; grass and other plant cuttings; dead plants; trees; leaves; etc.

Construction and demolition wastes: Construction and demolition debris such as building materials, wires, lumber scrap, masonry scrap, drywall, roofing and similar materials.

Residential customer: For the purposes of this agreement, a residential customer is a residential water user inside the corporate limits of the City of Rogers. Residential water users are those customers who are on the Rogers Water System, metered separately, and whose water and wastewater generation is primarily domestic in nature. Multiple-family dwellings metered together are considered to be "commercial" water accounts. Since the purpose of this agreement is to grant exclusive franchise rights for residential solid waste collection, hauling and disposal, only those customers designated as "residential" by the Rogers Water Utilities will be billed for solid waste collection on the water bill. Commercial and industrial water accounts will not be billed for trash services on the water bill. All such customers must contract separately for trash services.

Small commercial customers: At the joint discretion of the commercial customer and the residential contractor, commercial water customers inside the city limits may be considered to be "residential customers." Written confirmation from the contractor to Rogers Water Utilities is required before trash services will be billed on the commercial customer's water bill. However, this service will be limited to those commercial customers generating no more than one 96-gallon container bin of trash weekly.

Low volume customer: A residence with one or more occupants who qualify as senior citizens (above the age of 60 years) and that produces such minimal quantities of solid waste that it amounts to no more than one 64-gallon container bin per week.

Collection area: The area or space in which customers place materials for collection. Residential curbside collection areas must be located within five feet of the roadway used by the collection vehicle to service the customer.

Section II. - Scope of agreement.

- (a) **Effective date.** This agreement shall become effective on the day of execution. The contractor shall begin services as set out by this agreement on the 1st day of January, 2016, which date shall be referred to herein as the implementation date.
- (b) **Term.** The base term of the agreement shall be for a period of five years, beginning on the effective date and ending at midnight on the 31st day of December 2020.
- (c) **Exclusive right.** The city, as grantor, grants the contractor, as grantee, the exclusive right during the term of this agreement to collect and transfer residential recyclable materials and residential solid wastes from businesses and residential units located within the service area as defined in service, operations, and performance, section III. The city warrants that it has

the authority to grant such an exclusive right as described in this agreement and as delegated to it by A.C.A. § 8-6-211.

So long as the contractor is not in default of the performance requirements set forth herein, the city covenants that during the term of this agreement it will not engage other individuals or companies or become involved in the activity of collecting and transferring residential recyclable materials and residential solid wastes or any other similar activity that would impair the exclusive right of the contractor as set forth in this agreement. Firms engaged in collecting and transferring medical or hazardous wastes may be excluded from the terms of the agreement.

(d) Compliance with applicable laws.

(1) The parties to this agreement agree that the laws of the State of Arkansas shall govern the validity, construction, interpretation, and effect of this agreement. The contractor shall conduct the collection and transfer services as provided for by this agreement in compliance with all applicable federal, state, and local regulations and laws. This agreement and the work to be done as described herein is also subject to the provisions of all pertinent municipal ordinances, which are hereby made a part hereof with the same force and effect as if specifically set out herein. Nothing in this agreement shall be construed, read, or interpreted to limit, reduce, undermine, negate, or compromise any of the rights and/or immunities granted to the city under A.C.A. 21-9-301.

(2) The contractor, its successor in interest, officers, agents, or employees agree that they shall not violate any regulation or law directly related to the pollution of the environment or the collection, transportation, or disposal of solid wastes, as defined by the Arkansas Department of Environmental Quality, the United States Environmental Protection Agency, the Northwest Arkansas Regional Solid Waste Management District, or any other similar department or agency of the state or federal government.

(e) Breach of agreement. Upon failure of the contractor to perform in a satisfactory manner under the terms of this agreement or failure to perform in accordance with applicable laws and regulations, the city shall have the right, in addition to any other rights they may have, to submit a written demand for assurances. Within 21 days of receipt of this demand, the contractor must either appear before the city council or return a written response explaining the reasons for the nonperformance, substandard performance, delayed performance, or noncompliance and explaining the steps that have been taken or will be taken to correct the problem. Except under conditions of force majeure, the city council may then cancel the contractor's license with the city and terminate this agreement by majority vote. Nothing in this "Section II (e)" shall act to reduce, limit, negate, or compromise the city's other rights and remedies under this agreement including their right to liquidated damages.

(f) Force majeure. Neither the contractor nor the city shall be liable for the failure to perform their duties nor for any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war, governmental order or regulation, strike, act of God or other similar contingency beyond the reasonable control of the contractor or the city. If such circumstances persist for more than seven days or if after their cessation either party is unable to render full or substantial performance for a period of seven days, written notice may be given to the other party seven days in advance, and the agreement may be cancelled.

- (g) **Assignment of agreement.** No assignment of this agreement or any right accruing under this agreement shall be made in whole or in part by the contractor without the express written consent of the city, which consent shall not be unreasonably withheld.
- (h) **Waivers.** A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or an acceptance of defective performance.

Where the condition to be waived is a material part of the agreement such that its waiver would affect the essential bargain of the parties, the waiver must be supported by consideration and take the form of a written modification of this agreement, made as provided for elsewhere in this agreement.

- (i) **Provisions found to be invalid.** If any provision of this agreement is held to be unenforceable for any reason by a court of competent jurisdiction, such holding shall not affect the remaining parts of this agreement, which shall remain in full force and effect.
- (j) **Binding effect.** The provisions, covenants, and conditions in this agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.
- (k) **Amendment of the agreement.** No modification or amendment of this agreement shall be effective unless it is in writing, approved by the governing bodies of both parties, and signed by the authorized representatives of the city and the contractor. A signed original is to be fastened to the original agreement, with signed copies retained by the parties. Consent to amendment or modification shall not be unreasonably withheld by either party.

The written modification is not to become effective for a period of 14 business days, during which time either party may revoke the writing upon delivery to the other party of written notice to that effect, dated and signed by a notary.

- (l) **Merger clause: previous agreements superseded.** This agreement constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understanding, whether oral or written, are to be without effect in the construction of any provision or term of this agreement if they alter, vary, or contradict this agreement.
- (m) **Counterparts.** This Agreement may be executed in two (2) or more counterparts (including by facsimile or electronic signature, which shall constitute a legal and valid signature), and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same document. This Agreement shall become effective when one or more counterparts, taken together, shall have been executed and delivered by all of the parties.

Section III. - General services, operations and performance.

- (a) **Area to be served.** All residences, and those small businesses that qualify as residential customers, located within the current and future annexed corporate limits of the City of Rogers are included in the area to be served. In addition, the city and the contractor may agree at any time to add additional customers as required.
- (b) **Routes and schedules for collections.** The contractor shall provide the city with maps and schedules of collection routes and keep such information current at all times. In the event of changes in the routes or schedules that will alter the day of pickup, the contractor shall

promptly notify each customer affected within five days. Any changes in routes and/or schedules are subject to the city's approval, which will not be withheld unreasonably. The contractor shall plan all routes on public or private rights-of-way other than alleys. If the contractor proposes to perform collection in alleys, the contractor must seek and obtain written permission from the city.

- (c) **Missed collections.** In the event that a regularly scheduled collection is missed and a complaint received by either the city or the contractor, and where no fault can be found on the customer's part, a special collection of the solid wastes will be required by the contractor within 36 hours of notification. The city shall notify the contractor of any complaints it receives within the next workday.
- (d) **Holidays.** Thanksgiving Day, Christmas Day and New Years Day may be observed as noncollection holidays by the contractor. If any of these fall on a normal collection day, collection and transfer services will be provided by the contractor on the following day; or the contractor shall publish prominent public notice to all affected customers of the revised schedule for the week.

The suspension of collection service on any holiday in no way relieves the contractor of the obligation to provide collection and transfer services once per week. Extending the hours of service to meet this obligation is subject to the city's approval.

- (e) **Inclement weather.** In the event that the contractor misses a collection day because of inclement weather, the contractor shall adjust the collection schedule so that the residences that were missed shall receive service on the first available collection day following the inclement weather, so as to adhere to the once-per-week collection service. Contractor shall make all reasonable efforts to publicize the modified collection schedule so that residents will know in advance when their trash will be collected. Nothing in this section shall act to relieve contractor of their obligations under Section III (h) below.
- (f) **Complaints.** The contractor shall receive, document, copy to the office of the mayor, and respond to all complaints regarding services provided under this agreement. Any complaints received by the office of the mayor shall be directed to the contractor's office within the next workday. Should a complaint remain unresolved for five (5) business days, it will be referred to the City Council's Public Works Committee for recommended resolution. The city council shall have the right to demand an explanation or resolution to its satisfaction. Any complaint not reasonably resolved to the Committee's satisfaction shall constitute a breach of this agreement. Nothing in this section (f) shall reduce or alter the requirements to address missed "pick-ups" in 36 hours as described in Section III (c) above.
- (g) **Contractor's equipment.**

(1) The contractor shall, at all times during the terms of this agreement and regardless of mechanical and environmental factors, maintain a fleet of at least ten (10) "side-load" and two (2) "rear-load" trash removal trucks (the "fleet") to remove and transport solid waste and recyclable materials. There shall be eight (8) "front-line" trucks (7 "side-load" and 1 "rear-load") and four (4) "spare" trucks (3 "side-load" and 1 "rear-load") maintained as a part of this "fleet." By January 1st, 2017 and for the duration of this agreement thereafter, the average age of the above mentioned eight (8) "front-line" trucks shall not exceed five years of age. If, at any time after January 1st, 2017, the contractor fails to maintain the appropriate average age of the "front-line" trucks, it shall constitute a material breach of this agreement.

The contractor shall maintain a detailed written inventory of vehicles and equipment in service and shall provide updated copies of same to the city upon the city's request.

(2) All trucks and other equipment shall be kept in proper and safe repair and in sanitary condition. All trucks shall be properly tagged and insurance certificates and other state mandated documentation shall be kept on board at all times. Each truck shall bear, as a minimum, evidence of licensure from the Benton County Solid Waste Management District, and the name and telephone number of the contractor plainly visible. All containers and equipment shall bear the name and telephone number of the contractor and the information shall be as visible to the public as reasonably possible.

(3) Each truck shall be equipped with at least one broom and shovel and absorbent material which the contractor's agents can use to clean up solid waste or fluid leakage that may be spilled or otherwise scattered during the collection process. Contractor shall clean and mitigate said spills immediately upon notification or recognition of said spill. If contractor requires assistance from the city in mitigating a spill event mentioned above, contractor agrees to reimburse the city for any material, equipment, and labor used to mitigate said spill. All vehicles shall be sufficiently secure so as to prevent any littering of solid waste and/or leakage of liquid. No vehicles shall be willfully overloaded. In addition, each truck shall be equipped with a flare, fire extinguisher, first-aid kit, and a list of emergency telephone numbers. Failure to maintain equipment shall be considered a breach of this agreement.

(4) Contractor shall provide trucks equipped with mechanical arms and hydraulic lifts necessary to provide automated emptying of container bins placed at curbside by homeowners, which is intended to eliminate the handling of bags and garbage cans by human hands; thereby resulting in less spilled refuse and littering.

- (h) **Disposal site.** All solid wastes collected pursuant to this agreement shall be transferred by the contractor either directly, or via a state or federal permitted transfer station, to a licensed Subtitle D landfill operation. Contractor shall maintain written agreements with at least two (2) alternative disposal sites or transfer stations that maintain a hard surface disposal area so that solid waste removal and recycle services will not be interrupted during inclement weather due to ground conditions at the landfill.
- (i) **Customer rates.** The customer rates submitted on the bid submittal form, are to show a single fee for both collection and disposal of materials. Collection fees are based upon the contractor's calculation of monthly cost to collect solid waste only from residential customers. The customer rates have been calculated by the contractor and shall be paid to the contractor to offset the contractor's disposal expense as well as reimbursement for collection of waste. During the term of this agreement, the cost of disposal may change. Accordingly, and to protect the contractor from absorbing increases in the cost of disposal, proportional adjustments to the customer rates may be authorized by the city to reflect actual changes in the cost of disposal. Such proportional adjustments must be approved by the city council.
- (j) **Recyclable materials processing site.** All recyclable materials collected by the contractor in accordance with the service obligations of this agreement, shall be delivered to a processing location within 20 miles of the corporate limits of the City of Rogers for processing.

- (k) **Personnel.** The contractor shall require all employees to be courteous at all times, to work quietly and not to use loud or profane language. Each employee shall wear a company uniform clearly labeled with the name of the company and employee. Clothing will be as neat and clean as circumstances permit. Employees shall wear uniform shirts while on duty.

The contractor's employees shall follow the regular walks for pedestrians while on private property, shall not trespass or loiter on private property, shall not cross property to adjoining property, and shall not meddle or tamper with property which does not or should not concern them. All personnel shall be trained to use safety equipment and procedures.

Each employee assigned to drive a vehicle shall, at all times, carry a valid commercial driver's license for the type of vehicle he or she is operating. The contractor shall make available to the city, copies of substance abuse and safety policy documents and shall provide evidence of training for risk management, substance abuse, and general safety.

Contractor shall maintain, at all times, seven (7) "full time" drivers and one (1) "swing" or "part time" driver with the qualifications listed above. Contractor shall also maintain, at all times, four (4) "full time" Customer Service Representatives (CSR) at their local facility. Two (2) of these CSRs shall be dedicated exclusively to providing customer service to residents of the city. Failure of contractor to maintain these employee requirements, even momentarily, shall constitute a material breach of this agreement.

(l) **Mandatory service, trash accounts and billing procedures.**

- (1) **Municipal billing.** By city ordinance, trash service in the City of Rogers is considered a part of the city's provision of basic utility services and is mandatory for all residences and businesses that qualify as residential customers. Residential customers with city utility accounts shall have monthly trash service charges added to municipal bills along with other existing city services. Residential customers without city utility accounts must contact contractor on their own about establishing service. Billing by Rogers Water Utilities shall be subject to current policies of the Rogers Water Utilities regarding nonpayment and late payment of bills.
- (2) **Contractor billing.** The price payable to contractor for exclusive franchise rights shall cover all costs of collection and disposal, including fees assessed by the State of Arkansas and the Benton County Solid Waste Board, as well as a charge of \$0.50 per customer monthly payable to the Rogers Water Utilities for billing and collection services.
- (3) **Information sharing.** The contractor and RWU shall exchange and update a monthly status of account record that will list active customer accounts, new accounts, closed accounts and changes in service levels. The city shall have the right to inspect by itself or through an independent auditor, pertinent contractor records related to customer accounts and the collection of any service fees.
- (4) **Revenue distribution.** At the close of each month, and on the basis of the information sharing set forth above, RWU shall pay the contractor all money collected for collection services, less the \$0.50 monthly which RWU will retain for billing and collection services and less any liquidated damages assessed by the city within that billing cycle.
- (5) **New accounts.** Residential customers shall apply for service at the Rogers Water Utilities. The contractor shall assist new customer applicants when necessary by phone or by scheduling an appointment to review service and rates in person. The city,

working with the contractor, shall be responsible to provide educational brochures setting forth the city's policies, rules of service and rates. Such brochures shall be distributed by the Rogers Water Utilities as new residential customers establish accounts.

- (m) **Local facility.** The contractor shall establish and maintain a local facility to serve as the base of operations within 20 miles of the city limits, by the effective date of this agreement. All trucks and other equipment to be used in connection with the agreement shall be kept at the customer location or at the local facility in order to permit expeditious service response. The contractor shall provide adequate telephone communications; shall have a local telephone number, and, shall have at least two people available to receive calls during normal business hours 9:00 a.m. to 4:30 p.m., at least five days a week, including Saturday. The contractor and/or the office personnel shall maintain some form of telecommunications with the operations personnel during operations hours. This facility shall include a transfer station where residents can take items of trash, including bulk waste items, for disposal, and a recycling center to process the recyclables collected in the city. This transfer station shall be open at least five days a week, including Saturday. Rates charged for disposal of items shall be as follows:

Automobile load	\$6.50
Pick-up truck load without racks	\$11.00
Pick-up truck load with racks	\$15.50
One-ton truck	\$15.50
One and a half-ton truck or larger, per non-compacted yard	\$11.00

- (n) **Notice.** A letter properly addressed and sent by first class mail, certified mail, or registered mail to either party at the address provided below shall constitute sufficient notice whenever written notice is required for any purpose of this agreement. Notice is deemed to have been sent when received at the appropriate address.

Address for notices to city:
contractor:

City of Rogers c/o, Mayor
301 W. Chestnut St.
Rogers, AR 72756

Address for notices to

Inland Waste Solutions, LLC
14101 HWY 290 W. BLDG. 600
Austin, TX 78737
956-943-4556

Section IV. - Residential services, operations and performance.

(a) Solid waste services for residents.

Base fee service. The contractor shall provide residential solid waste collection and transfer services for all residential customers located within the service areas of this agreement one time per week using container bins on wheels, which will be limited to one

container bin weekly of either a 32-gallon, 64-gallon or 96-gallon capacity. The base fee charged to customers shall be:

64-gallon recycling container-cart: \$2.85

96-gallon solid waste container: \$11.60

64-gallon solid waste container: \$11.20

32-gallon solid waste container: \$10.50

(b) Residential collections.

Recycle bin collection. One time per week curbside collection of residential recycling shall be provided as a tandem service to the one time per week solid waste collection service outlined above for those customers. The customer will be instructed to set out recycle bins under the same placement rules as for the set out of solid waste. The contractor shall be responsible to provide an inventory of recycling bins sufficient to provide for all customers who are in the city.

Recyclable materials. Customers will be permitted to recycle newspapers, magazines, plastic bottle containers, aluminum and tin cans and cardboard. Educational brochures will instruct customers how to prepare items.

Yard waste services. Residents are encouraged to manage yard wastes on-site using techniques such as backyard composting and mulching mowers to the greatest extent possible. However, residential yard waste collection will be provided by contractor at an extra cost to residents through purchase of special green bags, which shall be picked up on the same day as solid waste. Any increase in the price charged for these special bags must be approved by the city council.

Bulky waste pickup. The contractor shall provide bulky waste pickup service for all customers at least one day a month. Items to be included in the bulky waste pickup shall be negotiated between the contractor and the city and publicized to all residents of the city.

Leaf pickup. The contractor shall provide pickup of leaves at least once on each route during the fall months, and shall advertise the date of such pickup in advance.

Extra trash following Christmas. Contractor shall make provisions to pick up extra trash on the pickup date following the Christmas holiday.

(c) Other services. Contractor shall provide dumpster service for all city buildings and parks facilities at no cost to the City of Rogers, for the exclusive use of these city facilities.

(d) Disabled persons. In accordance with the Americans with Disabilities Act and exceptional customers' needs, the contractor will make reasonable accommodations for collecting the trash and recyclables of customers with disabilities. Such persons shall be provided house-to-curb service at the rate for curbside service. The City of Rogers and the contractor shall be responsible for making determinations regarding such reasonable accommodations and shall adopt appropriate guidelines for qualifying persons for such services. Any persons denied such service shall have the right of appeal to the public works committee of the Rogers city council.

(e) Hours of collection for residential services. Normal hours of collection are to be from 7:00 a.m. to 6:00 p.m. on the city-approved collection day(s) of each week. Exceptions may be made only when the contractor has reasonably determined that an exception is necessary to

complete collection and transfer of an existing route due to unusual circumstances or upon the mutual agreement of the city and the contractor. In either case the city will be notified.

Section V. - Nondiscrimination.

Neither the contractor, nor any person(s) acting on the contractor's behalf, shall discriminate against any person because of race, sex, age, creed, color, religion, national origin, or disability.

Section VI. - Insurance and bonds.

Insurance. The contractor shall maintain in full force and effect throughout the term of this agreement, and provide proof thereof, the following types of insurance in at least the limits specified below:

Coverage	Minimum limits of liability
Workers' compensation	Statutory
Comprehensive general liability	\$2,000,000.00 combined single limit

All insurance shall be by insurers acceptable to the city and authorized to do business in the State of Arkansas. Prior to the commencement of work, the contractor shall furnish the city with certificates of insurance or other satisfactory evidence that such insurance has been produced and is in force. Said policies shall not thereafter be canceled, permitted to expire, or be changed without 30 days' advance written notice to the city and the city's approval. The city shall be listed on policies as an "additional insured".

Performance bond. Within 30 days from the date this agreement is executed by the city, contractor shall provide a performance bond in the amount of \$500,000.00 to secure its faithful performance under the terms and conditions of this agreement. The bond will be renewable annually and non-terminable except upon 30 days' advance notice to the city by the bonding company. The content of the bond shall be subject to advance review and approval by the senior staff attorney of the city.

Section VII. - Permits, licenses and taxes.

The contractor shall obtain and assume the cost of all state, district, and city licenses and permits and promptly pay all taxes.

Section VIII. - Basis and methods of payment.

- (a) **Service fees for regular weekly collection and transfer services.** The monthly fees charged to solid waste customers for regular weekly services are set forth previously. Such fees are composed of collection service and disposal fees. Supplemental charges retained by the city shall include billing service(s). The monthly fees charged for weekly solid waste services shall be added to each customer's water and sewer bill and the city shall be responsible for collecting the fees. It shall receive \$0.50 monthly per customer for providing billing and collection services.
- (b) **Procedure for contractor compensation.** Within ten business days following the end of each month, RWU shall remit revenues collected for residential collection and disposal services to the contractor. RWU shall hold from such monthly remittance, \$0.50 per active water account billed as a billing service fee to compensate the city for billing services and any assessed liquidated damages due the city. Late payment of fees shall be remitted at the next regular monthly collection deadline, but collections from late payment penalties shall be retained by RWU.

- (c) **Unpaid accounts.** In the event a customer fails to make full payment of the water, sewer and sanitation bill in a timely fashion, RWU agrees to promptly take action to collect such overdue accounts, including termination of water, sewer, and solid waste collection service. Rogers Water Utilities will make every reasonable effort to collect unpaid bills, however, will not be responsible to contractor for such unpaid accounts.
- (d) **Rate changes.** There shall be no change in rates for collection service fees under this agreement for a period of 12 months from its effective date unless warranted by a change in services and approved by the city council. For the following and each subsequent year of the term hereof, the contractor may receive rate adjustments upward or downward to reflect changes in the actual cost of operations, as approved by the city council. In addition to the above, the contractor may petition the city at any time for additional rate and price adjustments at reasonable times on the basis of significant changes in its cost of operations, such as revised laws, ordinances, or regulations.

In the event of a dispute regarding rate adjustments, the dispute shall be submitted to the City Council's Public Works Committee, which shall make a recommendation to the city council, whose decision shall be binding and not subject to further arbitration.

Section IX. - Evaluations.

The Rogers Water Utilities, the contractor, and the Public Works Committee shall participate in evaluations of the services rendered and the terms of the agreement at such times as the committee shall determine. The evaluations shall address:

- (1) **Customer complaints.** The contractor shall maintain excellent customer relations. Customer complaints, as defined by the public works committee of the city council, shall be documented by the contractor throughout the agreement period and shall be reported to the office of the mayor. RWU, the contractor, and the public works committee will work cooperatively to provide useful and necessary information to all customers.
- (2) **Solid waste management changes.** The contractor shall work closely with the City of Rogers and Benton County Solid Waste Management District in adapting services, procedures, routes, etc. to the solid waste management efforts of the city, the county, and the district. Any solid waste management changes which require an amendment to this agreement shall be mutually agreed upon by the city and the contractor.
- (3) **Findings.** The public works committee chair shall be responsible for presenting to the city council the findings of each evaluation and the resulting recommendations of the committee.

Section X. Liquidated damages.

Any damages assessed under the provisions of this section shall be in addition to any other remedies available to the city under the terms of this agreement. Section III (1)(4) of this agreement shall control how liquidated damages are paid to the city. Due to the nature of the agreement between contractor and city and the amount of time and resources the city has to devote to citizen concerns when solid waste and recycle services are compromised, the parties hereby agree to the following values of liquidated damages to be paid by contractor to the city, when assessed by the city, under the following conditions:

1. Willfully throwing or scattering of a bin used by a resident for holding recyclable materials or solid waste at the curb: Liquidated Damage Amount = \$25 per incident.
2. Failing to clean up any spilled materials as described in Section III (g)(3), with each spill being one (1) incident: Liquidated Damage Amount = \$25 per incident per day.
3. Failing to cure a "missed collection" within 36 hours as required by Section III (c) with each residence being one (1) incident: Liquidated Damage Amount = \$25 per incident per day.
4. Failing to resolve a customer complaint within the allotted five (5) day time period per Section III (f) with each separate complaint being one (1) incident: Liquidated Damage Amount = \$25 per incident per day for the first seven (7) incidents within one (1) month. Liquidated Damage Amount = \$50 per incident per day for all subsequent incidents within that same month.
5. A violation of the provisions of Section II (d)(2) of this agreement. Liquidated Damage Amount = \$2500 per incident.
6. Failure to provide a "bin" in the appropriate timeframe as required by Section XI (5): Liquidated Damage Amount = \$25 per day for each day beyond the required seven (7) calendar days delivery period the "bin" is not provided.

Section XI. – Additional Terms.

1. It is the intent of the City of Rogers to encourage residents to limit their production of solid waste to one 96-gallon container bin weekly per household. However, should residential customers desire extra container bins, they may contract for a period of at least one year with the contractor to obtain a second container bin, and will be billed one hundred twenty five percent (125%) of what they would be billed for the first container bin.
2. Residential customers who wish to recycle more material than will fit in the one recycling bin provided by the contractor, will be able to purchase from the contractor an additional bin at a one-time cost of \$5.00, and this extra bin will be picked up by contractor at no additional charge to the residential customer.
3. Within sixty (60) days of the execution of this agreement, contractor will present options for the installation of a GPS tracking system on the "fleet" of trash removal trucks to the city. Once the city has selected and accepted one of the options, contractor will have said selected system installed on the "fleet" of trash removal trucks no later than December 31st, 2016. Once installed, city shall maintain access to the GPS system throughout the term of this agreement for purposes of monitoring the "fleet" in response to customer service concerns.
4. There will be no collection of recyclable items in apartment complexes in which solid waste is collected by the contractor through the use of dumpsters.
5. Contractor shall, at all times, maintain an adequate supply of container bins and recycle bins for purposes of replacement of damaged bins and provision of services to new customers. Replacement and bins for new customers shall be provided within seven (7) calendar days of a customer request.
6. Contractor shall prepare and submit an acceptable written contingency plan to the city within thirty (30) days of the execution of this agreement. This contingency plan shall

provide for measures and procedures to be implemented in the event of unforeseen events and activities not otherwise provided for in the terms of this agreement. The contingency plan shall not supersede, override, or otherwise compromise any provision of this agreement. The contingency plan is specifically NOT incorporated into this agreement.

7. The contractor will provide dumpsters at no cost to the City of Rogers at the following city facilities, sized or serviced to reasonably meet the needs of that facility or park:

Rogers Police Department, 1905 South Dixieland

Rogers Library, 711 South Dixieland

Elm Street Center, Elm and Second Street

Fire Dept. #6 5701, S. Bellview Rd.

Fire Dept. #5, 2525 Champions Blvd.

Fire Dept. #3, 1 Etris Dr.

Fire Dept. #2, 1907 South 17th St.

Fire Dept. Admin., 201 N. 1st St.

Fire Dept. Training, 3003 Oak St.

City Admin., 300 West Poplar

Rogers Cemetery, 510 West 10th St.

City Animal Shelter, 3101 West Oak St.

Parks and Rec., 947 North 13th St.

Fire Department, Municipal Airport

Parks and Rec. Youth Center, 315 West Olive St.

City of Rogers, 101 New Hope Rd.

City of Rogers, 415 South 1st St.

Municipal Airport

Rogers Water Utilities

Rogers Recycling Center (2 dumpsters)